

DRAFT PROPOSAL APRIL 21, 2006

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE FISH AND WILDLIFE SERVICE OF
THE UNITED STATES DEPARTMENT OF THE INTERIOR,
THE CALIFORNIA DEPARTMENT OF FISH AND GAME, AND THE
THE CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE PROTECTION

A. INTRODUCTION

Many species of plants and wildlife in California have been listed and continue to be listed as threatened or endangered by the Secretary of the Interior pursuant to the Federal Endangered Species Act and by the California Fish and Game Commission pursuant to the California Endangered Species Act. Additionally, many listed and species that may be listed in the future are protected in certain areas by agreements among jurisdictions and the wildlife agencies, pursuant to the state of California's Natural Communities Conservation Planning (NCCP) program. In light of these listings, officials of the California Department of Forestry and Fire Protection have expressed concerns regarding their ability to continue to require the abatement of flammable vegetation within their respective jurisdictions in order to protect life, property and the environment from the threat of fire.

B. AUTHORITIES

This Memorandum of Understanding is hereby made and entered into by and between the California Department of Forestry and Fire Protection, hereinafter referred to as "CDF"; the Fish and Wildlife Service of the United States Department of the Interior, hereinafter referred to as the "Service"; and the California Department of Fish and Game, hereinafter referred to as "Department" under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. Section 1531 et. seq.) the Fish and Game Code Section 702 and the California Endangered Species Act, as amended (Fish and Game Code Section 2050, et. seq.).

C. PURPOSE

The purpose of this Memorandum of Understanding is to establish guidelines by which the CDF, Fire Chiefs and the Districts can continue to protect lives and property from the threat of fire by requiring the abatement of flammable vegetation pursuant to State Law, County and District ordinances and Cities' municipal codes and to establish a cooperative mechanism whereby the Service and Department may assess, minimize, and help account for potential adverse impacts to sensitive species and habitats resulting from vegetation abatement activities.

D. RECITALS

1. Fire Districts are responsible for assuring compliance with applicable provisions of their ordinances, the California health and Safety Code and the California Public Resources Code Sections 4290 & 4291 regarding the abatement of flammable vegetation.
2. Fire Departments of the Cities are responsible for assuring compliance with the Government Code and applicable provisions of their municipal codes regarding the abatement of flammable vegetation.
3. CDF is responsible for assuring compliance with applicable provisions of the California Public Resources Code sections 420 & 4291 regarding the abatement of flammable vegetation.
4. The Service is responsible for enforcing the federal Endangered Species Act of 1973.
5. The Department is responsible for enforcing the California Endangered Species Act, and the Native Plant Protection Act. The Service And Department Together administer the state NCCP program (NCCP Act of 1991.)
6. Areas immediately surrounding improvements to real property, whether such areas are undeveloped wildlands or are altered in some way, do not generally constitute core natural habitat areas, nor do they typically support sensitive species, by virtue of their proximity to human activities.
7. Uncontrolled wildfires pose a serious threat to human lives and property, but are generally part of the natural disturbance cycle of adjacent wildlands. The propensity of wildlands to carry fire to human developments usually necessitate the provision of fuel breaks in order to reduce or eliminate the likelihood of damage to property.
8. Properly maintained fuel modification zones and fire breaks will reduce the incidence of non-Natural fires spreading from developed areas to natural land and lower the potential impacts of unseasonable and frequent wildfires to listed species and their habitats.

NOW THEREFORE, the parties hereto mutually agree as follows:

Section I. General Terms and Conditions:

This MOU authorizes the Take of species listed as threatened or endangered, or candidate species (under Chapter 1.5 of Division 3 of the Fish and Game Code) for management purposes necessitated by or incidental to those certain fire protection measures described herein.

The management purposes for which the MOU is issued are:

1. Mandatory fire protection measures in accordance with Section 4290 of the Public Resources Code, specifically:

- a) Measures necessary to implement minimum fire safety standards related to defensible space which are applicable to state responsibility are lands under the authority of CDF.
 - b) Measures necessary to implement minimum safety standards related to fuel breaks and greenbelts.
 - c) Other measures required by Section 4290 as determined by the Director of CDF.
2. Mandatory fire protection measures in accordance with Section 4291 of the Public Resource Code, specifically:
- a) The maintenance around and adjacent to any building or structure in, upon, or adjoining any mountainous area of forest-covered lands, brush-covered lands, or grass-covered lands, or any land which is covered with flammable material, of a fire break made by removing and clearing away, for a distance of not less than 30 feet on each side of such building or structure or to the property line, whichever is nearer, all flammable vegetation or combustible growth.
 - b) The maintenance around and adjacent to any building or structure such as is described in a) above, additional fire protection or fire break made by removing all brush, flammable vegetation, or combustible growth which is located from 30 feet to 100 feet from such a building or structure or to the property line, whichever is nearer, as may be required by the Director of Forestry and Fire Prevention upon a finding that, because of extra hazardous conditions, a firebreak of only 30 feet around such building or structure is not sufficient to provide reasonable fire safety, and including the maintenance of grass and other vegetation more than 30 feet from such building or structure and less than 18 inches in height where necessary to stabilize the soil and prevent erosion.
3. Mandatory fire protection measures in accordance with Section 4296.5 of Public Resource Code, specifically, upon order of the Director of Forestry and Fire Protection or the agency having primary responsibility for the fire protection of the area, the destruction, removal, or modification so as not to be flammable, of any vegetation or other flammable material on any railroad right-of-way on forest-covered, brush-covered, or grass-covered land.
4. Any measures as deemed necessary by the Fire Chief and in accordance with the Guideline section of this MOU.

Section II. GUIDELINE

The following guidelines may be implemented by individuals or entities owning or leasing property within the jurisdiction of the County and the cities as well as by CDF, Fire Districts, and the Cities:

- a. **Improved Property.** Property owners, their lessees, CDF, fire districts, and cities shall be permitted to clear all flammable vegetation within a one hundred (100) foot radius of all structures' using methods, such as mowing and trimming that leave the plant root structure intact to stabilize the soil. Clearing is not limited to these methods and discing, which exposes bare mineral soil, may be used if deemed necessary by the local fire chief. Where the distance from the structure to the property line of the parcel on which the structure is located is less than the distance required to be cleared, the adjacent owner, lessee, CDF, Fire districts, or cities shall be permitted to establish the required fuel break. The removal of flammable vegetation does not apply to single specimens of trees, ornamental shrubbery, or similar plants which are used as ground cover, if the Chief of the local fire department determines that they do not form a means of rapidly transmitting fire from the native growth to any structures.
- b. **Unimproved Property.** Property owners, their lessees, fire districts and cities shall be permitted to establish fuel breaks on unimproved property if such a fire break is deemed necessary based on written findings by the Chief of the local fire department to protect improved property, or public safety and welfare. The Chief of the local fire department shall deem such a fuel break necessary only if the subject property is located within an unusually high fuel loading area or within a high or very high hazard area as determined by California Department of Forestry Fire Severity Mapping. These findings shall be provided to the Department and Service upon their adoption by the Chief of the Fire Department at least ten (10) days prior to the issuance of abatement orders. If the Department of Service fail to respond within the ten-day period, the party may complete the abatement and not be in violation of this MOU. Clearing may be done using methods, such as mowing and trimming that leave the plant root structure intact to stabilize the soil. Clearing is not limited to these methods and discing, which exposes bare mineral soil, may be used if deemed necessary by the local fire chief.
- c. **Areas previously cleared.** Areas that have been consistently cleared of vegetation over the last three years may continue to be cleared even though they are outside of the limits established in Sections a. and b. above.

For the purposes of this MOU, the term "structure" does not include fences or similar barriers enclosing or separating areas of land.

- d. **Roadway clearance.** Property owners, their lessees, fire districts, Cal Trans and cities shall be permitted to clear up to 30' along each side of established regularly traveled roadways. The required width will be at the discretion of the fire chief.
- e. **Prior or Future Agreements.** The terms and guidelines in this MOU may be superseded by any other specific agreement entered into with the Service or the Department governing the removal of vegetation. This MOU shall not preclude revision of the flammable vegetation abatement guidelines contained herein when future regional and local conservation plans are adopted by the local jurisdictions.
- f. **Federal Lands.** Land owned or controlled by Federal Multiple Use Land Management Agencies, will be handled on a "case by case" basis, with the federal agency that controls the subject lands to determine what clearing is appropriate.
- g. Property owners, their lessees, fire districts, and cities shall continue to avoid vegetation removal in recognizable riparian (stream side) zones and vernal pool depressions, as these areas are naturally somewhat resistant to fire and are subject to separate federal and state regulations. If such removal is deemed necessary by the local fire chief, the Department and Service must be notified in writing and consulted at least ten (10) days prior to anticipated vegetation abatement. If the department and Service fail to respond within the ten-day period, the party may complete the abatement and not be in violation of this MOU.

Section III. NOTIFICATION OF LANDOWNERS

Fire agencies that require abatement of flammable vegetation clearance shall develop guidelines for the clearance. These guidelines shall be made available to the public, either through direct mail or a public notices, stating that the guidelines are available and the location where they can be obtained. The guidelines must include directions as to the minimum and maximum limits for vegetation clearing and acceptable clearing methods. Additionally, the following statement shall be included in the guidelines:

Landowners who have received notice from the California Department of Fish and Game or U.S. Fish and Wildlife Service of the occurrence of rare, threatened, or endangered species on their property in areas subject to fuel break clearance must notify both agencies in writing at least 10 days prior to vegetation clearing. The agencies will have up to 10 days following such notification to 1) determine whether the proposed clearing complies with state and/or Federal endangered species requirements and 2) to suggest volunteer, alternative abatement measures if feasible and warranted. Failure of the agencies to respond within 10 days will allow the landowner to proceed with abatement activities without further delay. Failure by landowners to provide adequate notification as described above may render landowners liable under State and Federal law.

Section IV. BIOLOGICAL SURVEYS

Property owners, their lessees, CDF, fire districts and cities shall not be required to perform biological surveys as a condition precedent to performance of the fire protection activities established by the guidelines set forth in Section 1.

Section V. PROJECT OFFICERS

- a. Project Officer for the CDF is:
- b. Project Officer for the Fire Chiefs is:
- c. Project Officer for the Districts is:
- d. Project Officer for Service is:
- e. Project Officer for the Department is:

Section VI. SPECIAL TERMS AND CONDITIONS

The CDF, fire districts, cities, the Service and the Department shall comply with the Reasonable and Prudent Measures and the Terms and Conditions identified in Biological Opinion issued by the Service for this Action. Take of listed species that is deliberate and results from an act outside the scope of the Project as defined in Section I is not authorized.

It is understood by the parties that the Service authorizes incidental take of the following federally listed threatened and endangered species: Name of Species, which may be impacted by the fire protection activities established by the guidelines set forth in Section I. Furthermore, it is understood by the parties that the department authorizes the take of species listed as threatened species or endangered species, or candidate species (under Chapter 1.5 of Division 3 of the Fish and Game Code) which may be impacted by the fire protection activities established by the guidelines set forth in Section I.

Any person who becomes aware of the take of an individual of a candidate or listed species as a result of that person's engaging in the permitted activity shall report the take to the Department as soon as practicable and shall make available the remains of any animal or plant taken to the Department of Fish and Game upon demand.

Section VII. FINDINGS

1. Department Findings:

Pursuant to Fish and Game Code Section 2081, the Department finds that implementation of the fire control, abatement, and protection measures contemplated by this MOU is not likely to result in jeopardy to the continued existence of the identified State listed or candidate species, if the terms and conditions of the MOU are fully implemented and adhered to. The Department finds, further, that by preventing or limiting the spread of fire to the identified species' habitat, this MOU will serve to protect the identified species from further degradation.

Section VIII. AMENDMENTS

Amendments to this MOU may be proposed by any of the parties and shall become effective upon being reduced to a written instrument executed by all of the parties. It is anticipated and understood by the parties that this MOU, specifically Name Species, may be amended to include additional species that in the future are listed as threatened or endangered by the Secretary of the Interior or the California Fish and Game Commission. In addition, it is understood that this MOU may be amended to include additional parties.

Section IX. TERM OF AGREEMENT

This MOU shall become effective upon the date it is executed by the parties (execution date) and shall remain in effect for an initial period of one (1) year. Thereafter, this MOU shall be automatically extended from year to year on the aforementioned execution date unless the Service of the Department objects to the extension, in writing, within thirty (30) days prior to the expiration of this MOU. Any written objection must state the reason for the objection to the extension of this MOU. In the event a written objection is provided, the parties shall work cooperatively to resolve any problems so that the MOU may be extended.